

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION CINCINNATI**

EARL KELLY PRINCE, et al.,

Plaintiffs,

vs.

NATIONAL LABOR RELATIONS
BOARD, et al.,

Defendants.

Case No.1:16-CV-00419-MRB

Judge Michael R Barrett

ORDER

The majority of the Defendants have been dismissed from this case. The only remaining Defendants are Defendant Yaffe, Defendant Solomon, and Defendant Chavarry.

Early in this case, the magistrate judge entered an order (Doc. 19) requiring Plaintiffs to show cause, in writing, within twenty (20) days why the complaint should not be dismissed against Defendants Yaffe, Solomon and Chavarry for failure of service. When Plaintiffs failed to comply with the show cause order, the magistrate judge issued a report (Doc. 27) recommending that the claims against Defendants Yaffe, Solomon, and Chavarry be dismissed for failure of service. Later, the magistrate judge issued a supplemental report (Doc. 29) providing Plaintiffs notice of their right to object to the report and recommendation, which notice had inadvertently been omitted from the initial report and recommendation. Thereafter, Plaintiffs timely filed objections (Doc. 31), and Defendants timely filed a memorandum in opposition (Doc. 32) to the objections.

In their objections, Plaintiffs essentially concede that service on Defendants Yaffe, Solomon, and Chavarry was never perfected, but attempt to avoid the consequences of that failure by asserting that Defendants Yaffe, Solomon, and Chavarry should have voluntarily provided their addresses and other personal information in disclosures pursuant to Rule 26(a) of the Federal Rules of Civil Procedure. (Doc. 31, PageID 145). However, the government persuasively argues that “initial disclosures are not due until after a defendant is properly served,” and “such initial disclosures are not a vehicle by which defendants are required to voluntarily provide plaintiffs personal information necessary to complete service.” (Doc. 32, PageID 156). Accordingly, Plaintiffs’ objections fail.

Furthermore, even if the objections (Doc. 31) offered legally valid reasons for the delay in service, the Court is not obliged to accept those reasons unless Plaintiffs could somehow excuse their non-compliance with the show cause order. Plaintiffs’ failure to offer any explanation for their non-compliance with Magistrate Judge Litkovitz’s Order serves as an independent basis to overrule their objections.

Therefore, for the foregoing reasons, the Court **ADOPTS** the remaining recommendations of the magistrate judge (Doc. 27; Doc. 29). The claims against Defendants Yaffe, Solomon, and Chavarry are **DISMISSED** without prejudice for failure of service. As the remaining Defendants have been dismissed, this case is **CLOSED AND TERMINATED** from the active docket of this Court.

Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of this Order would not be taken in good faith and therefore denies Plaintiffs leave to appeal *in forma pauperis*. Plaintiffs remain free to apply to proceed *in forma pauperis* in the Court of Appeals. See *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), overruling in part *Floyd v. United States Postal Serv.*, 105 F.3d 274, 277 (6th Cir. 1997).

IT IS SO ORDERED.

s/Michael R. Barrett

Hon. Michael R. Barrett
United States District Judge